Howe K. Sipes Company *and* Furniture Workers' Division, International Union of Electronic, Electrical, Salaried, Machine and Furniture Workers, AFL–CIO, Local 282. Cases 26–CA–16128, 26–CA–16148, 26–CA–16231, 26–CA–16373, 26–CA–16422, and 26–CA–16516

September 21, 1995

DECISION AND ORDER

BY CHAIRMAN GOULD AND MEMBERS BROWNING AND TRUESDALE

On June 9, 1995, Administrative Law Judge Philip P. McLeod issued the attached decision. The Charging Party filed exceptions, and the Respondent filed a motion to strike the Charging Party's exceptions.

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

The Board has considered the decision and the record and for the reasons set forth below has decided to affirm the judge's rulings, findings, and conclusions, and to adopt the recommended Order.

Section 102.46(b) of the Board's Rules and Regulations sets forth the minimum requirements for Board consideration of a party's exceptions to an administrative law judge's decision, including the setting forth of those specific portions of the judge's decision to which it excepts, with supporting legal or record citations or appropriate argument.[1]

In its exceptions, the Charging Party does not identify any findings of the judge that it contends are in error, but following a narrative which does not refer at all to the judge's decision, concludes that the judge's dismissal of complaint allegations should be set aside. As the Charging Party's exceptions do not put in issue any of the judge's findings as required by Section 102.46(b), we shall grant the Respondent's motion to strike those exceptions and adopt the judge's decision. See Section 102.48(a) of the Board's Rules and Regulations.

ORDER

The National Labor Relations Board adopts the recommended Order of the administrative law judge and orders that the Respondent, Howe K. Sipes Company, Memphis, Tennessee, its officers, agents, successors, and assigns, shall take the action set forth in the Order.

Donna M. Osborne, Esq., for the General Counsel.
Donald R. Wellford, Esq. (McDonnell Dyer), of Memphis, Tennessee, for the Respondent.

[1] See *Rocket Industries*, 304 NLRB 1017 (1991); *Bonanza Sirloin Pit*, 275 NLRB 310 (1985).

DECISION

STATEMENT OF THE CASE

PHILIP P. MCLEOD, Administrative Law Judge. I heard this case in Memphis, Tennessee, on January 10, 11, 12, and 13, and February 6 and 7, 1995. The charge in Case 26–CA–16128 was filed on April 4, 1994. Thereafter, charges were filed and/or amended in the various other cases captioned above on various dates between April and December 1994. Complaints and amended complaints issued on June 30, August 31, November 7, and December 28, 1994. As consolidated and amended, the complaint alleges, inter alia, that Howe K. Sipes Company (Respondent) violated Section 8(a)(1), (3), and (5) of the National Labor Relations Act (the Act), by condoning and encouraging violence against union supporters; by referring to union supporters as ''trash;'' by advising employees not to associate with union supporters; by monitoring the bathroom visits of union supporters; by issuing various warnings to union supporters; by suspending and discharging union supporters; by unilaterally changing various practices and policies because of employees' union activities and without prior notice to or bargaining with the Union, and by unlawfully withdrawing recognition from the Union.

In its answer to the consolidated amended complaints, Respondent admitted certain allegations, including the filing and serving of the charges; its status as an employer within the meaning of the Act; the status of Furniture Workers' Division, International Union of Electronic, Electrical, Salaried, Machine and Furniture Workers, AFL–CIO, Local 282 as a labor organization within the meaning of the Act; and the status of certain individuals as supervisors and agents of Respondent within the meaning of Section 2(11) of the Act. Respondent denied having engaged in any conduct which would constitute an unfair labor practice within the meaning of the Act.

At the trial herein, all parties were represented and afforded full opportunity to be heard, to examine and cross-examine witnesses, and to introduce evidence. Following the close of the trial, counsel for General Counsel and Respondent both filed timely briefs which have been duly considered.

On the entire record in this case, and from my observation of the witnesses, I make the following

FINDINGS OF FACT

I. JURISDICTION

Respondent Howe K. Sipes Company is a corporation, with its office and place of business in Memphis, Tennessee, where it is engaged in the business of manufacturing baseball uniforms and school letter jackets. In the course and conduct of its business, Respondent annually purchases and receives at its Memphis facility goods and products valued in excess of $50,000 directly from points located outside the State of Tennessee. Respondent also annually sells and ships from its Memphis facility goods and products valued in excess of $50,000 directly to points located outside the State of Tennessee.

Respondent is, and has been at all times material herein, an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act.

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II. LABOR ORGANIZATION

Furniture Workers' Division, International Union of Electronic, Electrical, Salaried, Machine and Furniture Workers, AFL–CIO, Local 282 is, and has been at all times material herein, a labor organization within the meaning of Section 2(5) of the Act.

III. THE UNFAIR LABOR PRACTICES

A. *Background*

Howe K. Sipes Company is a manufacturer of athletic clothing, particularly baseball, softball, and little league uniforms, and school letter jackets. Howe K. Sipes Jr. is the founder, president, and principal stockholder of Respondent, which has been in business for 48 years, and at its present location in Memphis since 1962. Respondent's plant is located in a single building consisting of three sections, one for each of three operating departments, including the cutting, sewing, and shipping departments. Also located in the front of the building is Respondent's corporate office headquarters and sales department.

By far the largest department is the sewing room which consists of a single, large open room 200 by 120 feet. Adjacent to the sewing room is the cutting room on one side, and the warehouse/shipping area on another.

The plant manager for many years prior to his forced resignation in May 1993 was Lon White. White was succeeded by Glen Williams, who has sole supervisory responsibility over the sewing room and shipping departments, but not over the cutting room which has its own supervisor. Under Williams are three area supervisors, including David Rikard over the jacket line, Betty Bobo over the baseball line, and Karen Sanders over the shipping department. These three individuals direct the day-to-day operations of their individual departments, and although they lack the authority to discipline employees, they do effectively recommend disciplinary action which they may think is appropriate.

Respondent has 140 sewing machines on the sewing room floor and an additional 80 sewing machines in a separate warehouse. The large sewing room consists of machines aligned on one side constituting the jacket line and machines aligned on the other side constituting the baseball uniform production line. On both lines, production is broken down into multiple operations. On both lines, production starts on one end of the line and progresses until the product is completed at the other end of the line. Depending on its complexity, some operations require more sewing machine operators than others. In addition, there are more sewing operations than Respondent has sewing machine operators to perform them, making it necessary that operators have the capability to perform several different operations. The record reflects that transfers of sewing machine operators from one operation to another are common place.

The number of available experienced sewing machine operators has declined over the years to the point where for some time now Respondent has not been able to produce in its own plant all that it needs to meet customer demands. Respondent has been contracting out ever increasing amounts of work since 1984. As a result of the decreasing supply of experienced sewing machine operators, Respondent regularly advertises its need for experienced sewing machine operators with industrial experience in want ads in the local newspaper. Respondent's work force has fluctuated between 85 to about 115 employees. At the time of the trial herein, Respondent needed approximately 40 additional sewing machine operators and had on the sewing floor or in storage in the cutting room enough cut material to keep the work force occupied for a period of at least 7 months.

B. *The Union Campaign and Bargaining*

In July 1993, the Union began to organize Respondent's production and maintenance employees. In September 1993, the Board conducted an election among employees, and on September 20, 1993, the Union was certified as the exclusive bargaining representative of Respondent's employees.

Beginning in October 1993, negotiations ensued between the parties. Numerous negotiating sessions were held, but the parties were unable to reach agreement. In September 1994, Respondent was presented with a petition signed by a majority of employees stating that they no longer wished to be represented by the Union, and on September 21, 1994, Respondent withdrew recognition from the Union.

C. *Allegations Relating to Employee Shirley Jones*

Shirley Jones worked for Respondent from October 1992 until April 1994. Jones worked as a sewing machine operator on Respondent's jacket line. Jones testified that in late January or February 1994 she became a union steward and joined the Union's negotiating committee. Counsel for General Counsel did not illicit testimony from Jones regarding any union activity in which she might have been involved prior to this time.

On January 27, Plant Manager Glen Williams issued a warning to Jones for unacceptable attendance, stating that in the past 20 working days Jones had missed 5 complete days, been late 4 days, and left early 2 days. Jones had worked only 9 complete days out of the prior 20 working days. The warning stated that Jones' attendance must improve considerably or she would receive further disciplinary action up to and including termination. The accuracy of Williams' warning to Jones is not disputed by counsel for General Counsel.

Respondent concedes that it has never issued a written policy which states that a specific number of absences will result in a warning. The record, however, is clear, and counsel for General Counsel appears to concede, that beginning in late 1993 Respondent began to experience severe attendance problems. A review of the other warnings which Respondent issued relating to attendance shows that while Respondent had no strict uniform policy regarding the number of tardies or absences which Respondent would tolerate, Respondent issued discipline regarding attendance to numerous other employees who there is no reason to believe were union supporters. The record clearly does not support counsel for General Counsel's argument that Jones was ''singled out.''

Counsel for General Counsel argues that the timing of the attendance warning to Jones ''is curious'' in that it was shortly after she became a part of the union negotiating committee. In fact, however, the record does not show clearly it was after Jones became a member of the negotiating committee that she received this warning. As indicated above, Jones testified that she became a union steward and joined this

committee in late January ''or February'' 1994. Only when it became clear that the timing was significant did Jones assert definitely that it was in January. Jones' demeanor on cross-examination, however, made her less than credible. She repeatedly exhibited a tendency to argue with counsel, and revealed a clearly hostile attitude. If counsel for General Counsel had some document available which showed precisely when Jones was appointed a union steward and joined the union negotiating committee, she did not introduce it. I find myself unable to rely on Jones' testimony to conclude that she was ever definitely involved in union activity at any time prior to receiving the January warning for attendance. Counsel for General Counsel has failed to carry the necessary burden of proof to show that Respondent issued the January 1994 warning to Jones due to her union activity, and that complaint allegation is hereby dismissed.

In mid-March 1994 Jones was involved in an incident which resulted in her being issued a disciplinary warning. On March 10, a plumber doing repair work at Respondent's facility caused Respondent to close one or both of the women's restrooms for a short time for repairs. It is undisputed that Shirley Jones left her workplace and went to the smaller, 2-stall restroom, where she lit and began smoking a cigarette. Karen Ellis, a bargaining unit custodial employee, was attempting to clean the restroom. A verbal battle developed between Ellis and Jones when Ellis ordered Jones out of the restroom so she could clean it. Whether it was Ellis or Jones who left the restroom first to complain about the other is not clear, but both left the room within a few seconds of each other looking for Plant Manager Glen Williams for that purpose. It is clear that Jones left the restroom carrying the lighted cigarette onto the sewing room floor. When a fellow employee pointed out to Jones that she had a lighted cigarette, Jones returned to the bathroom, extinguished it, and then followed Ellis to Plant Manager Williams. When Jones got to where they were standing, Ellis was already complaining to Williams that she could not clean the restroom because Jones and others were in the room smoking. Jones then reported to Williams that Ellis had threatened if Jones did not get out of the restroom, Ellis was going to ''whip her ass.''

Respondent President Sipes was present in the area of the conversation between Williams, Ellis, and Jones. In response to Ellis' threat, Sipes made a remark upon which the witnesses to the event disagree. Jones testified that Sipes retorted, ''the next time she does it, whoop her ass.'' Employee Mattie Green testified Sipes remarked to Plant Manager Williams, ''I'll tell you what, you just let Karen whoop her ass, just whoop her ass.'' Employee Paulette Payne provided an even more damning account, testifying that in conjunction with his remark that Ellis should ''whoop'' Jones, Sipes also stated that he was ''tired of all this union stuff.'' No other witness corroborates Payne, and I do not credit her claim that Sipes made any reference to the Union. Sipes and Plant Manager Williams deny not only the exaggerated version of Payne, but also the testimony of Jones and Green. According to both Sipes and Williams, when he heard Ellis' threat to ''whoop'' Jones, Sipes remarked, ''Not in here you won't.'' Ellis and Jones were then both told to get back to work. I find that Jones provided the most accurate account of Sipes' remark.

Counsel for General Counsel contends that by his remark, Sipes was condoning violence against union adherents in violation of the Act. The record, however, is clear that Respondent had a policy against smoking anywhere in the facility except the breakroom area. Although Shirley Jones claimed that before this incident she never heard of any rule limiting smoking to the breakroom area, employee Kathleen Veasey, also called by counsel for General Counsel, candidly admitted Respondent had a longstanding policy that smoking should occur only in the breakroom area. I credit Sipes, Plant Manager Williams, and other witnesses called by Respondent who testified like Veasey that Respondent had long maintained this policy. Sipes candidly admitted knowing and being utterly frustrated by the fact that female employees congregated in the women's restroom, which he considered off-limits, ''sometimes 15 at a time'' to smoke. The record is replete with evidence that despite Respondent's consistent effort to curtail smoking in the restrooms, the largely female work force has continued to use the women's restroom as a haven from Sipes and Plant Manager Williams, both males, to take brief unauthorized smoke breaks throughout the workday.

Although counsel for General Counsel contends that Sipes remark condoned violence against union supporters, the record ultimately fails to support that conclusion. I do not credit Payne that Sipes made any reference to the Union or union supporters in uttering his ill-advised remark that Ellis whip Jones' ass. It is just as likely, if not indeed more likely, that Sipes was simply expressing his continued extreme frustration over the fact that despite his best efforts, female employees continued using the restroom to smoke. In fact, a careful analysis of Jones' own testimony supports this conclusion over any argument that Sipes was targeting her as a union supporter. Jones testified that when she and Ellis were describing their confrontation in the restroom to Plant Manager Williams, Ellis complained that she was unable to clean the restroom because there were other women in the restroom standing around smoking and in the way. In describing Sipes' response to Ellis' remark, Jones testified that Sipes stated, ''Yea, I know they do this, and the next time she does it, whip her ass.'' I find that in his ill-advised remark, Sipes was indeed simply expressing extreme frustration over the continued practice of female employees using the restroom to smoke in spite of the long standing policy that smoking was to occur only in the breakroom area, and the record does not support a conclusion that Sipes was condoning violence against Jones or any other employee because of their support for the Union. Accordingly, I shall dismiss that allegation from the complaint.

Jones testified that after this incident between her and Ellis, Jones went to lunch. During lunch, Jones decided that she was too upset by the incident to continue working the rest of the day. After Jones received permission from Williams to leave, she clocked out and left for the day. That afternoon it came to Sipes' and Williams' attention that as the confrontation unfolded between Jones and Ellis, Jones had come out of the women's restroom and onto the sewing room floor with the lighted cigarette in her hand. The following day, Plant Manager Williams issued a written warning to Jones for smoking in the restroom. Jones, however, refused to accept the warning without a union steward present. Williams then gave Jones a second warning for refusing to ex-

cept the first warning, and when Jones refused the second warning as well, Williams suspended Jones.

Counsel for General Counsel argues that the initial warning for smoking in the restroom was issued for ''pretextual reasons'' and that Jones was ''singled out.'' I reject this argument. While the warning states on its face that it was being issued because Jones had been smoking in the restroom, it is also perfectly clear from the face of the warning that it was precipitated by the fact that Jones had brought the lighted cigarette onto the plant floor, a serious violation of company policy due to the flammable nature of many of the materials sewn by Respondent's employees. Every witness, including Jones, acknowledged that Respondent has always maintained an absolutely strict policy against anyone smoking on the sewing room floor.

I reject counsel for General Counsel's argument that this warning was issued for pretexual reasons. Counsel for General Counsel acknowledges in her brief that in refusing to accept the warning, Jones was apparently under the mistaken belief that she was entitled to union representation during the presentation of any discipline. Counsel for General Counsel nevertheless argues that the insubordination referred to in the second warning refers to the fact that Jones did not believe she was deserving of the first warning. Plant Manager Williams testified that as he attempted to present the first warning to Jones, she threw that warning on the floor. Jones and employee Kathleen Veasey testified that when Jones refused to take the first warning, Williams threw the warning toward a table and missed, causing the warning to drop onto the floor.

Whether or not Jones threw the first warning on the floor is irrelevant. What is clear is that as Williams attempted to issue the first warning to Jones, Jones refused to even accept it. The second warning and ultimately the suspension were issued to Jones not because she believed she was undeserving of the first warning but because she refused to even accept the warning from Williams. I reject counsel for General Counsel's argument that either of these two warnings or the resulting suspension were the result of any unlawful motivation on Respondent's part. In refusing to even accept the first warning from Plant Manager Williams, Jones was clearly insubordinate, and it was this insubordination, not her union activity, which caused the second warning and the suspension. Accordingly, I shall dismiss those allegations from the complaint.

On or about March 25, when Jones returned to work from the suspension described above, Plant Manager Williams reassigned Jones from her normal function of sewing linings to sewing facings. Counsel for General Counsel argues that the transfer was unlawfully motivated as evidenced by the fact that the machine to which Jones was assigned was isolated from other machines and provided less of an opportunity for Jones to communicate with other employees. Counsel for General Counsel acknowledges that Respondent has reassigned employees and transferred them from one machine or one job function to another since long before the union campaign ever began. According to counsel for General Counsel, however, reassignments occurred far more often after the Union was certified. Counsel for General Counsel offered conclusionary opinion testimony to that effect from several witnesses. No precise and specific evidence was introduced, however, to support that conclusionary opinion testimony.

Plant Manager Glen Williams testified that it was common practice at Respondent's facility to transfer employees between jobs for any of numerous reasons, including the seasonal nature of Respondent's business, the wide variety of styles of different products made, employee absenteeism and tardiness, and the relative abilities of employees to perform certain jobs. Williams testified that he transferred Jones on this occasion because he needed an extra person to sew facings and Jones had shown she was not dependable enough in her attendance for him to rely on to sew linings, a more critical part of the sequential order of production. The record supports Williams' testimony regarding the transfer of employees as well as Jones' checkered attendance record as described above. Counsel for General Counsel's own witnesses testified to having been transferred on numerous occasions between various jobs. Employee Mattie Green, for example, testified to moving between jobs setting collars, sewing zippers, and sewing trim. Louvenia Saulsburry testified to transfers she experienced as a result of the seasonal nature of Respondent's business, as a result of which she sometimes sewed jackets and other times sewed collars. Saulsburry also testified that she sometimes joined wool jackets when sewing work on nylon jackets was slow.

Plant Manager Williams testified that due to the wide variety of jackets made by Respondent, there was more transfer of employees between jobs in Respondent's operation than any other place Williams had worked. Williams' testimony is supported by other employee witnesses. Elizabeth Ware, who has worked for Respondent 26 years, testified that employees have always been transferred between jobs and that she regularly moves between banding, side seaming, end seaming, and sewing linings. Employee Willie Mae Ritter, who has worked for Respondent approximately 20 years, testified that she has done several jobs at any given time, and that it is normal for employees to move from job to job. I found Ritter particularly straightforward and credible in her testimony about transferring from job to job.

I note too that by letter dated December 10, 1993, Respondent explained in detail to the Union the necessity of reassigning employees from one operation to another as the need arises. Plant Manager Williams maintained a list of operators from information provided by operators themselves identifying the jobs that each knew how to do. On Williams list, which was created long before any union activity, Williams identified Jones as being capable of sewing either linings or facings. As Williams testified, Jones had never produced enough to enjoy incentive earnings over the base rate in either position, and Jones was in no way disadvantaged by the transfer. Based on all the above, I conclude that counsel for General Counsel has failed to prove Jones' reassignment was in any way motivated by her union activity, and I shall dismiss that allegation from the complaint.

D. *Allegations Relating to Paulette Payne*

Employee Paulette Payne testified that on one day in mid-March 1994, she was going to the women's restroom when she met Sipes. According to Payne, Sipes said to her at the time, ''Don't go in the bathroom and stay too long with them trash.'' Payne testified that when she proceeded into

the restroom, she met Shirley Jones, Louvenia Saulsburry, Kathleen Veasey, and Dorothy Moffitt, all union supporters.

Counsel for General Counsel argues that since Respondent knew Jones, Saulsburry, Veasey, and Moffitt were all union supporters, an inference can be drawn Sipes was referring to them being union supporters when he referred to them as ''trash,'' and therefore Sipes violated Section 8(a)(1) of the Act.

Sipes denied making any reference to employees as ''trash.'' As already mentioned above, Payne's credibility leaves something to be desired. Just as I have discredited Payne, however, I have also discredited Sipes above and found that he did make the remark to Ellis that she could ''whoop'' Jones if Jones continued smoking in the bathroom, albeit for reasons not related to Jones' union activity. In the final analysis, I find that while Sipes did refer to employees in the bathroom as ''trash,'' counsel for General Counsel has offered no substantive evidence that Sipes actually knew who was in the bathroom. Nor is there any reason to draw the inference suggested by counsel for General Counsel that Sipes' reference was to employees being union supporters. Indeed, there is every reason to believe that Sipes' reference to any employees in the bathroom as ''trash'' was more in reference to the continued practice of employees escaping there for an unauthorized smoke break than because of their union activity. After the Union was certified, for example, Sipes had no problem allowing employees to hold regular weekly union meetings during breaktime inside Respondent's facility in the breakroom area. All in all the record suggests less of a confrontation or battle between management and employees because of union activities than because of the continuous practice of female employees frequently taking these brief smoke breaks in the women's restroom throughout the workday. Finally, I find that even if Sipes referred to certain employees as ''trash'' because of their union activities, while such a comment would certainly reflect union animus, it would not rise to a violation of Section 8(a)(1) of the Act. Counsel for General Counsel cites no case finding such a remark to violate the Act, and I find none supporting this position. Accordingly, that allegation is dismissed from the complaint.

Payne has worked for Respondent for many years. She was involved in the union campaign from its inception, frequently wearing union T-shirts and/or buttons to work. After the Union became certified, Payne was a member of the union negotiating committee. On March 21, 1994, Respondent issued Payne a warning for low production. The warning accuses Payne of deliberately working slow and slowing down production because of frequent bathroom visits.

The record establishes that as bargaining dragged on between Respondent and the Union and no agreement was reached, Respondent began to observe an increase in unauthorized bathroom smoke breaks and a general decrease in production. Indeed, in her posttrial brief, counsel for General Counsel states that she ''does not contend that Ms. Payne's production was not lower than it may have been in the past.'' During negotiations, Respondent complained to the Union about the decrease in production as well as the increase in unauthorized bathroom smoke breaks. The Union responded with a detailed request for information regarding employees involved in a perceived deliberate slowdown in production, which is more fully discussed below. The record tends to support Respondent's argument that a general slowdown in production occurred, and counsel for General Counsel appears to conceed the point in her brief. The issue which was always in dispute, however, was whether that slowdown was deliberate.

Counsel for General Counsel argues that it would make no sense for Payne to deliberately slow down production since seamstress' earnings are based on production. While that is partly true, there is also a base rate, and Respondent has established that many employees rarely produced enough to earn an additional amount above the base rate. To produce less than the amount which would earn a bonus based on production had no effect on the employees' wages who regularly produced less than the incentive threshold.

It is true, as counsel for General Counsel argues, that it had never been Respondent's practice to ''routinely'' issue warnings because employees did not make production. It is also true that employees had never been told they had to produce a certain specific number of pieces or else receive discipline. On the other hand, the record reflects that both Williams and previous Plant Manager Lon White issued warnings to employees from time to time for low production. Records also reflect that production was an issue discussed both by Williams and White at employee meetings. Counsel for General Counsel called certain witnesses who were both long-term employees and avid union supporters who denied that at employee meetings previous Plant Manager White ever discussed production. In addition, Dorothy Moffitt testified that the handwriting on documents introduced by Respondent recording notes of employee meetings and prior warnings by previous Plant Manager Lon White were not his handwriting. I find it absurd to think that Respondent has held numerous meetings with employees and had never discussed production, and I do not credit that testimony. Nor do I credit the testimony of Moffitt attacking the business records of Respondent which show that previous Plant Manager Lon White both discussed production with employees and issued warnings to employees from time to time for low production.

The evidence does not support a conclusion that the warning notice given Payne on this occasion was for her union activities rather than Payne's actual low production attributable to poor attendance. The record reflects that Payne's production and earnings were down because, during the first 4 months of 1994, there were only 2 weeks in which Payne worked a 40-hour week. Much of counsel for General Counsel's case seems to be premised on an assumption that when union activists employed by Respondent received discipline, the discipline necessary stemmed from the union activity. It has long been recognized, however, that union activism does not immunize employees from disciplinary action. The evidence reflects that the warning issued to Payne was consistent with Respondent's practice of issuing warnings for low production in similar circumstances. I find that counsel for General Counsel has failed to prove the warning issued to Payne was because of her union activity, and I shall dismiss that allegation from the complaint.

E. *Allegations Relating to Dorothy Moffitt*

Dorothy Moffitt worked for Respondent from July 1985 until her termination in late March 1994. Moffit, a seamstress, helped start the union campaign, was active throughout, and was on the employee negotiating committee which

met with Respondent. Respondent admits that it was very much aware of Moffitt's union activities and sentiments.

On December 17, 1993, Moffitt was issued a written warning and suspended for 2 days for insubordination. Counsel for General Counsel does not allege this matter to have been motivated by Moffitt's union activity. Plant Manager Williams testified that on this occasion, her machine was in need of repair but she then refused, without reason, Williams' directions that she move off her machine to an adjacent identical machine until her own machine was repaired. After Williams prepared a written warning to Moffitt, Moffitt refused to read the warning or acknowledge receipt of it. Williams testified credibly that while he read the warning to Moffitt, she tried to snatch it out of his hands stating, ''Either give it to me or you can kiss my ass.'' Moffitt also called Williams ''a crazy fool.'' Williams testified credibly that on this occasion, he advised Moffitt that any further insubordination would result in a possible discharge.

On the afternoon of March 15, 1994, Moffitt received a telephone call at her home from a funeral home in Mississippi concerning arrangements of a funeral. Carlos Brown, who received the call, went to Respondent's facility to tell Moffitt she needed to return the call. Brown testified that he arrived at Respondent's facility some time after 2 p.m. According to Brown, he waited approximately 45 minutes, and when Moffitt did not come up to the office to meet him, Brown finally left. According to Brown, he left the facility some time between 2:45 and 3 p.m. That evening, Brown informed Moffitt of the call and that he had attempted to bring a message to her at work, but was not allowed to speak to her.

Respondent does not deny it has a general policy of allowing employees to see visitors such as Brown. Plant Manager Williams testified that he has always applied a common sense policy that when he is not otherwise engaged, he will promptly go to the visitor at Respondent's reception area and try to accommodate the visitor's needs by either delivering a message or item to the employee, or send the employee out to see the visitor if necessary. Williams testified credibly that if it is close to a breaktime, he tells the receptionist to have the visitor wait until that next break. If the visitor claims there is an emergency, he will talk to the visitor and if the matter is important, he will get the employee immediately, even during working time. If visitors come during breaktime, either he or one of the employees who regularly sits in the reception area will simply call the employee whom the visitor wishes to see.

Plant Manager Williams acknowledged he was advised of Moffitt's visitor on the afternoon of March 15, and Williams also testified credibly that by the time he was able to get to the reception area, the visitor had left. Williams testified credibly that on this afternoon, the visitor for Moffitt came and went before the 2:30 p.m. break without leaving either identification or a message.

While Brown claimed he waited for Moffitt about 45 minutes, through the period which would have been the afternoon break, I do not find that aspect of Brown's testimony to be credible. Moreover, while Brown claimed that the call from the funeral home in Mississippi was somewhat of an emergency and that Moffitt was supposed to call the funeral home back by 5 p.m. that afternoon, Brown gave no explanation for not leaving either any identification or any message with Respondent's secretary that might have been passed on to Moffitt.

The following morning, March 16, Moffitt went to Respondent's facility where a confrontation occurred with Plant Manager Williams. According to Moffitt, she attempted to telephone Respondent's facility to notify them that she would not be able to come into work because it was now necessary for her to take a trip to Mississippi to complete the funeral arrangements. Respondent argues that Moffitt came to the facility that morning purposely to cause a confrontation with Williams. Whether or not Moffitt attempted unsuccessfully to telephone Respondent's facility, she did go to the facility and cause a confrontation with Williams.

Moffitt approached Williams accompanied by fellow employee and union activist Louvenia Saulsburry. According to Moffitt, she told Williams that she thought it was mean of him not to let her see Brown. According to Saulsburry, Moffitt asked Williams why he did not allow her to see Brown and Williams responded that Moffitt could not tell him how to take care of his business. According to Moffitt, Williams then said, ''Alright, you done said what you got to say, now get your ass out of here,'' pointing his finger in Moffitt's face. According to Moffitt, all she said in response was that Williams was a ''low down cracker,'' and she left.

Plant Manager Williams paints a much different picture of the confrontation that morning. According to Williams, Moffitt came up to Williams at his desk and shook her finger in his face, railing against him for failing to notify her of the visitor. According to Williams, Moffitt told him not to ever let that kind of thing happen again. Williams testified that Moffitt then took steps towards him at the same time reaching in her purse, saying, ''I'm going to get it.'' According to Williams, Moffitt had the reputation of carrying a gun. Another employee restrained Moffitt. According to Williams, after Moffitt then said she would have to be off for 2 days, Moffitt left slamming the door so hard that it had to be repaired by the mechanics.

Moffitt denied carrying a gun and denied threatening or impliedly threatening Willaims on this occasion. Saulsburry corroborates Moffitt that she did not threaten Williams. I am convinced that all witnesses to this confrontation on the morning of March 17 are telling a partially correct version, and that the whole truth lies somewhere in a middle ground. What is absolutely undisputed is that regardless of why Moffitt went to Respondent's facility, she intentionally caused a confrontation with Williams. While I have some question whether Moffitt tried to give Williams the impression she was threatening him with a gun, I have little doubt that Moffitt shook her finger at Williams and told Williams not to ever let that kind of thing happen again. Moffitt admits calling Williams a ''low down cracker,'' a racial slur.

When Moffitt returned to work on Monday, March 18, Williams met Moffitt outside the plant door. Williams informed Moffitt that she was being suspended because of the confrontation described above, and that Moffitt could not come into the plant. Moffitt asked for suspension papers, which Williams said he would mail to her. In spite of being told several times that she could not come into the plant, Moffitt ignored Williams, entered anyway, and refused to leave until she ''got her notice.'' Moffitt continued inside the plant until she finally found Sipes, when she again demanded the suspension papers immediately. Sipes told Moffitt that he

would have them prepared for her, and instructed Moffitt to wait in the breakroom. That much is undisputed.

Williams testified that when Moffitt ignored his orders not to come into the plant and she did so anyway, he and other supervisors followed Moffitt. According to Williams, Moffitt remarked, ''Why is all these people following me - I've got something that'll stop every one of them.'' Louvenia Saulsburry and Paulette Payne waited with Moffitt in the break area. David Rikard, supervisor over the jacket line, was instructed to remain with Moffitt while she was in the building, and Rikard stood a few feet from where Moffitt, Saulsburry, and Payne were sitting in the breakroom.

Rikard testified credibly that as he was standing nearby, Moffitt turned to him and said, ''Just keep standing there you nosy mother f____ker, you are just as low down as the rest of them. You're buddy-buddy to our face, but you're nothing but a low down, back-stabbing mother f____ker.'' Rikard responded that Moffitt's language was totally uncalled for. According to Rikard, Moffitt then turned to the other employees sitting with her and stated, ''I've got a bullet for everyone of them.'' Moffitt, Saulsburry, and Payne all denied that Moffitt made any threatening statement about a bullet or a gun.

Williams and Rikard both testified that when Williams delivered her suspension papers and check to Moffitt, she snatched them out of Williams' hand, saying that she was ''tired of your sh__t.''

After Moffitt left Respondent's plant, Rickard told Williams about Moffitt's comments while waiting for the suspension papers. Williams then discussed these remarks with Sipes, including Moffitt's reported threats of violence and previous acts of insubordination. Sipes then authorized Moffitt's discharge. When Moffitt returned from her suspension on or about March 25, she was met at the door of the plant and given her discharge notice.

Counsel for General Counsel argues that Moffitt's suspension and discharge were merely a pretext. I reject this argument. In resolving this issue it is unnecessary to find that Moffitt ever threatened anyone in management with a bullet or a gun. On the morning of March 17, Moffitt caused a direct confrontation with Williams in which she shook her finger in his face and told Williams that he had better not ever let that kind of thing happen again, referring to her not being allowed to see Carlos Brown the previous day. I find that Respondent had good reason to suspend Moffitt for this obvious act of insubordination.

When Moffitt came to the plant, on or about March 18, following the funeral, and was notified she was being suspended, Moffitt ignored direct orders from Plant Manager Williams not to enter the facility. Moffitt demanded that she be given suspension papers immediately. I credit Supervisor Rikard that while Moffitt was waiting for the suspension papers, Moffitt unleashed a verbal attack on him calling Rikard a ''low down, back-stabbing mother f____ker.'' When Williams delivered the suspension papers to Moffitt, she grabbed them from his hand telling Williams that she was ''tired of your sh__t.'' All or any of these remarks constitute blatant insubordination practically inviting her own discharge. Counsel for General Counsel has failed to prove that Moffitt was discharged because of her union activities or sentiments, and I shall dismiss that allegation from the complaint.

F. *Allegations Regarding Plant Visitation*

The complaint alleges that on two separate occasions, one involving Dorothy Moffitt, already discussed above, and the other involving Louvenia Saulsburry, Respondent failed to inform employees that they had visitors at the plant, and Respondent thereby discriminated against employees in violation of Section 8(a)(1) and (3) of the Act.

I have dismissed the allegation relating to Moffitt for the reasons already described above, and there is no need to repeat that discussion here. Louvenia Saulsburry testified that on one occasion in March 1994, she was denied the opportunity to speak with her husband when he visited the plant. Saulsburry testified that her husband came to the plant shortly before the 2:30 p.m. break to bring Saulsburry a check so that she could pay some bills when she got off work. Saulsburry admits that both the receptionist and Plant Manager Williams advised Saulsburry that she had a visitor in the reception area, but told her to wait until breaktime to talk to the visitor. Saulsburry's husband declined to wait, and instead put the check and other papers in Saulsburry's car.

Saulsburry's own testimony contradicts the allegation that she was not informed of her visitor. Counsel for General Counsel argues in her posttrial brief that even assuming this is so, Respondent nevertheless changed its past practice in retaliation against employees. This argument is based on the assertion of Saulsburry, Moffitt, and Paulette Payne that prior to unionization, employees were allowed to receive visitors at any time of the day, while after unionization employees were required to wait until breaktime. I find this assertion hard to believe. Plant Manager Williams testified credibly that before and after unionization it was his policy, as described above pertaining to Moffitt, to determine whether the purpose of the visit was an emergency, and, if not, ask the visitor to wait until the break period. Williams' testimony regarding his practice concerning visitors makes far more sense than the assertions of these three employees that they were allowed to receive visitors at any time of the day. No employer can maintain a reasonable production schedule in a sewing operation of this magnitude if employees are simply allowed to leave their work at any time of the day to receive visitors. I credit Williams' description of his policy allowing plant visitors, and the fact that that policy remained unchanged. Accordingly, I shall dismiss those allegations from the complaint.

G. *Subcontracting*

The complaint alleges that since February 1994, Respondent has unilaterally contracted out bargaining unit work in violation of Section 8(a)(1) and (5) of the Act. Only after she had completed her entire case-in-chief, and it became fairly clear that Respondent had a long history of subcontracting work, did she move to amend the complaint to allege that after the Union was certified, Respondent subcontracted work to retaliate against employees in violation of Section 8(a)(1) and (3) of the Act.

Louvenia Saulsburry, Kathleen Veasey, Dorothy Moffitt, and Paulette Payne testified that after the Union was certified, the amount of work available decreased markedly such that earnings were impacted. Veasey testified that after the Union was certified, she saw employees cutting and boxing work to be shipped out. Moffitt claimed that work went

down 75 percent after the Union was certified, a figure which I find very hard to believe. Paulette Payne testified that her earnings decreased approximately 50 percent. Counsel for General Counsel offered no record evidence to support these numerical assertions by Moffitt or Payne.

Union Representative Ida Leachman testified the Union was never notified that Respondent subcontracted any work until it heard from employees after it was certified that Respondent was shipping out work and employee wages were being adversely affected. As a result, by letter dated February 4, 1994, the Union requested information concerning its belief that Respondent was contracting out bargaining unit work. In this letter, the Union also asked for a detailed comparison of labor costs in producing products at Respondent's facility versus other facilities where work was being contracted. Respondent answered by letter dated February 15, stating that it was unable to provide any comparative labor cost figures because it did not have that information, either for itself or for outside contractors.

Respondent does not deny that it subcontracts work. Nor does it deny that this is work which could be performed by bargaining unit employees if they were available. Sipes testified credibly that the number of experienced sewing machine operators in the Memphis labor market has decreased steadily over the past several years. Respondent is able to sell far more than it is actually able to produce with its own employees. Sipes testified that less than half of Respondent's sewing machines are staffed. Sipes testified that Respondent regularly advertises for sewing machine operators, and hires all operators who responds, but the number of sewing machine operators nevertheless continues to decline. As a result Respondent has contracted out the making of baseball pants and shirts on a regular basis for several years. Records introduced by Respondent show that during the 12-month period immediately preceding the Union's certification, invoices for subcontracting totaled $298,121. Invoices for the 12-month period immediately following union certification, shows that Respondent contracted out work totaling $297,183, an amount almost identical to the 12-month period immediately preceding union certification.

Sipes testified credibly that on the day of the Board-conducted election, Union President Willie Rudd asked Sipes whether Respondent contracted out work. Sipes testified he told Rudd that he did contract out work to others, but did not accept contracts to make such products for others. Counsel for General Counsel did not call Rudd to deny or contradict Sipes' testimony. Instead, counsel for General Counsel simply called Union Representative Ida Leachman who testified that if Sipes had stated this to Rudd on the day of the election, she would have been in a position to hear this, and she did not. I find counsel for General Counsel's failure to call Rudd to be significant. She offered no explanation for not doing so, and asked for no recess or delay in the hearing for that purpose.

Respondent's own records show that the dollar volume of work subcontracted during months immediately following union certification increased substantially from months immediately prior thereto. However, the record clearly reflects that Respondent's business is extremely seasonal in nature. As indicated, the total dollar volume of work subcontracted by Respondent is almost identical for the 12-month period immediately following certification and the 12-month period immediately to certification. Sipes' testimony that he informed Union President Rudd of its practice of subcontracting on the day of the election stands uncontradicted by Rudd. Considering all of the available evidence, therefore, I find that counsel for General Counsel has failed to prove that Respondent subcontracted bargaining unit work either unilaterally without giving the Union prior notice or discriminatorily in order to retaliate against employees for selecting the Union to represent them. Accordingly, I shall dismiss those allegations from the complaint.

H. *Allegations Relating to the Union's Request for Information*

During the course of bargaining from October 1993 through September 1994, the Union made numerous requests for information from Respondent. Counsel for General Counsel does not dispute the fact that Respondent supplied the requested information in the vast majority of cases. In response to certain requests, however, Sipes did not respond at all or provided only part of the requested information.

By letter dated February 4, 1994, as previously discussed, the Union requested information regarding Respondent subcontracting work. Sipes responded by letter dated February 15, 1994, providing the requested information except for ''a detail comparison of labor cost of the Respondent and those of the outside contractor.'' With regard to that request, Respondent advised the Union that it did not have the information requested. Counsel for General Counsel argues that Respondent simply must have a breakdown of the labor costs for its own production and that of contractors. Sipes testified credibly, however, that it has never attempted to break down labor costs in that fashion because labor cost is not the reason Respondent has contracted out work. Sipes testified that the determining factor to subcontract work has always been and remains Respondent's inability to produce enough supply in its own plant to meet customers' demands. Accordingly, Respondent has never attempted an actual labor cost comparison. I credit Sipes.

As a result of the attendance warning issued to Shirley Jones, discussed above, the Union by letter dated February 11, 1994, requested Respondent to supply it with (1) copies of all current employees' attendance records from September 1993 to February 11, 1994; (2) copies of all disciplinary warnings and termination notices issued from September 1993 through February 11, 1994; (3) a detailed explanation of why Respondent began to enforce its attendance policy more stringently, including the date of the decision and date of implementation; and (4) copies of Respondent's attendance policy and rules. Respondent admits not answering this request for information. Respondent notes that it had already supplied the Union with its attendance policy and rules in a letter dated October 5, 1993. Respondent argues that item 3 is based on a false assumption and cannot be answered while items 1 and 2 are overly broad and unduly burdensome. That argument is addressed below.

In Respondent's letter to the Union of February 15 responding to the Union's quest for information regarding subcontracting, Respondent expressed the opinion that employees were engaged in a deliberate slowdown of production. In response to that accusation, the Union immediately replied by letter also dated February 15 requesting the date that the slowdown began; each date that Respondent alleges a slow-

down took place; names of employees involved; and details exactly what each employee did to contribute to the slowdown. The Union also requested beginning 2 weeks prior to certification and for each week thereafter the number of orders received from customers, the date received, the date delivery was requested, and the date the order was shipped; the number of total pieces cut each week; the total number of production employees who actually work each day; the number of orders backlogged and canceled each week as a result of the alleged slowdown; copies of all letters from customers concerning delayed shipments and order cancellations; and copies of correspondence from Respondent to employees concerning the alleged slowdown. Respondent did not answer the union letter of February 15. Respondent argues that this request by the Union was ''made in bad faith.'' It also argues that to the extent the information even existed, and its relevance to the slowdown could be shown, the information would be unduly burdensome, costly and time consuming to produce.

By letter dated February 22, the Union made yet another request for information. In this letter, the Union requested certain specific information regarding an employee named Jonnie M. West, including the employment application, copies of evaluation and progress reports, copies of disciplinary warnings, copies of production reports, copies of repair reports, and copies of termination reports and separation notices. Respondent had no employee named Jonnie M. West, and thus could not provide the Union with any of the requested information contained in this letter. Sipes testified credibly that he so advised the Union verbally in the next bargaining session, and the Union made no further attempt to pursue the inquiry.

By letter dated February 23, the Union requested certain specific information regarding an employee named Carol Durden, including copies of timecards for each week during 1994 and copies of records showing the amount of hours paid Durden each week. Respondent admits that it never responded to the Union's letter of February 23 in writing. Sipes testified, however, that Respondent explained this matter to the Union verbally at the next bargaining session, and the matter was not pursued by the Union. Sipes' testimony to this effect is uncontradicted.

As a result of information which the Union received from employees about Respondent moving certain machinery, by letter dated March 18, the Union requested specific information including the name of each machine moved and the description of each job performed by that machine; the destination of each machine removed; and the names of current employees who operated these machines since September 1993. By letter dated April 4, Respondent replied to the Union that the movement of machinery and equipment had not affected any bargaining unit employee. Respondent pointed out that it had not been able to find enough qualified operators for the machinery it had—a point which neither the Union nor counsel for General Counsel argues. Respondent pointed out that it had a substantial amount of excess equipment in storage and that dispersal of this equipment in no way affected bargaining unit employees—a point apparently also conceded by the Union. Respondent argues that it has no obligation to account to the Union for the movement and/or disposition of any of its surplus sewing machines in the absence of a showing that Respondent's actions effected a unilateral change in conditions of employment for bargaining unit employees.

By letter dated April 7, the Union requested the names, addresses, phone numbers, rates of pay, job classifications, and hire dates of all employees hired during the months of January, February, and March 1994. In this same letter, the Union requested the job classification of all employees terminated during those same months. Respondent responded to this request by letter dated April 21, providing the Union with the names, dates of hire, dates of termination, and rates of pay of all employees hired or terminated by Respondent during the relevant period. Respondent asserted that the telephone numbers of employees were confidential and refused to provide that information. Respondent also stated that the job classifications and addresses of employees would be supplied only if the Union could explain the relevance thereof. Later, by letter dated July 19, Respondent supplied the Union with an alphabetized list of employees in the bargaining unit by department, showing the name, address, and date of hire of each employee.

Finally, by letter dated August 31, the Union requested certain information regarding Respondent's profit-sharing plan, including copies of modifications in the plan since September 1993, and the names of all individuals currently employed by Respondent who have made withdrawals from the profit-sharing plan, including dates of withdrawals and amounts withdrawn. Respondent admits that it did not answer the Union's letter of August 31, asking for information about the profit-sharing plan. Respondent argues that all profit-sharing plan information relevant to the Union's performance of its statutory duties was contained in the plan itself, a complete copy of which was furnished to the Union in October 1993, in response to another request.

It has long been recognized that an employer has a duty to supply a union which represents its employees information which the Union requests that is relevant and necessary for it to bargain intelligently on behalf of the employees. *Detroit Edison Co. v. NLRB*, 440 U.S. 301 (1979). In order to be entitled to the information, there must first be a showing of probable relevance by the Union that the information sought would assist in the carrying out its statutory responsibility to represent employees. Certain types of information are presumptively relevant to the collective-bargaining process, including the names and addresses of bargaining unit employees, wage rates, benefits, job classification and description, and date of employment of bargaining unit employees. Conversely, an employer can be expected to supply only that information which it actually possesses or it can reasonably acquire. There is no requirement that, in response to a request for information, an employer conduct independent cost studies or analysis.

In response to the Union's February 4 request for information of a detailed comparison of labor costs of the Respondent and those of outside contractors, Respondent answered the Union truthfully that it did not have the information requested. Sipes testified credibly that labor costs were never a factor in subcontracting work, but rather subcontracting was required simply to meet customer demands, and Respondent so informed the Union. Since Respondent did not have the information requested, it had nothing to give the Union. Respondent could not reasonably be expected to conduct independent cost studies in response to the Union's re-

quest, particularly when that information played no part in Respondent's decision to subcontract work. Accordingly, I find that by not providing the Union with that information, Respondent did not violate Section 8(a)(1) and (5) of the Act.

With regard to the Union's request for information dated February 11, Respondent admits not answering this request for information. Respondent argues that providing the Union with copies of all current employees' attendance records from September 1993 to February 1994 is burdensome, and this may well be true. Respondent, however, has the obligation of establishing that by objective evidence, and in this case Respondent has offered no evidence in support of its position. Further, Respondent made no effort to offer the Union an alternative means of inspecting the information. Moreover, it is hard to imagine how it would be burdensome for Respondent to supply copies of all disciplinary warnings and termination notices issued during that same 6-month period. In a bargaining unit the size of Respondent's, the number of disciplinary warnings and termination notices are not likely to be significant in number. The Board has stated clearly that an employer may not simply ignore even a request which is burdensome, but ''must comply with the request to the extent it encompasses information that the Respondent is statutorily obligated to provide.'' *Tire America, Inc*., 315 NLRB 197 (1994). Finally, while Respondent may have already given the Union a copy of its attendance policy and rules, Respondent did not bother advising the Union that it had already done so and nothing had changed. Respondent simply ignored the Union's February 11 request for information. I find that by failing to provide the Union with this requested information, Respondent violated Section 8(a)(1) and (5) of the Act.

The Union's February 15 request for information, which followed Respondent's observation that employees were engaged in a deliberate slowdown of production, is more troubling. In its February 15 request, the Union asked for the number of orders received from customers, the dates received, the requested delivery date, the date orders were shipped, and the total number of pieces cut each week. The Union also asked for the number of orders backlogged and canceled each week as a result of the alleged slowdown, copies of letters from customers concerning delayed shipments and order cancellations, and copies of correspondences from Respondent to employees concerning the alleged slowdown. To some extent the information requested was the type of information which any employer would consider confidential, such as specific information regarding orders received from customers. Moreover, I agree with Respondent that the mere description of the information requested suggests that to respond to this request fully would be burdensome, costly, and time-consuming. Even the careful gathering of the requested information would not prove or disprove whether a slowdown was actually taking place. Last but not least, in view of the extremely high number of requests for information made by the Union, one cannot help but feel some sympathy for Respondent's argument that this request for information was not made in good faith, but was simply made to busy Respondent in replying to yet another request. At the same time, there can be no question that the requested information does bear directly on the issue of whether there is evidence of a slowdown, and what effect it was having on Respondent's production. What is significant is that Respondent made no effort whatsoever to reply to the request, provide the Union with any of the requested information, or give the Union any alternate method of viewing specific items which might trouble Respondent. Accordingly, I find that by refusing to provide any of the requested information, Respondent violated Section 8(a)(1) and (5) of the Act.

By letter dated February 22, the Union requested certain information specifically regarding employee Jonnie M. West. Sipes testified credibly that at the next bargaining session he advised the Union there was no present or past employee by that name, and the Union made no further attempt to pursue the inquiry. By letter dated February 22, the Union requested certain information regarding employee Carol Durden. Sipes testified without contradiction that Respondent replied to this request at the next bargaining session, and the matter was not pursued by the Union. Respondent cannot be required to respond to a request for information concerning a nonexistent employee. Further, there is no requirement that an employer respond to every request for information in writing. A verbal response to a written request is perfectly lawful, particularly where the Union then chooses not to pursue the subject further. Accordingly, I find that Respondent adequately responded to the Union's request for information regarding West and Durden, and those allegations are dismissed from the complaint.

By letter dated March 18, the Union requested specific information regarding the movement of certain machinery. Respondent answered in writing by letter dated April 4, informing the Union that the movement of machinery and equipment had not affected any bargaining unit employees. Respondent pointed out that it had not been able to find enough qualified operators for the machinery it had—a point which neither the Union nor counsel for General Counsel argues. Respondent pointed out that it had a substantial amount of excess equipment in storage and that dispersal of this equipment in no way affected bargaining unit employees—a point apparently also conceded by the Union and counsel for General Counsel. I agree with Respondent that it has no obligation to account to the Union for the movement and/or disposition of surplus sewing machines in the absence of a showing that Respondent's actions could in some way affect conditions of employment for bargaining unit employees. Accordingly, I find that by refusing to provide this requested information, Respondent did not violate the Act, and that allegation shall be dismissed from the complaint.

When the Union requested information by letter dated April 7 regarding the names, addresses, phone numbers, and job descriptions of employees, Respondent supplied most of the requested information. Respondent refused to supply, however, telephone numbers of the employees, asserting this to be confidential. Respondent offers no explanation for this position in its posttrial brief. Respondent also refused to provide job classifications and address of employees unless the Union could explain the relevance thereof. While Respondent eventually supplied the Union with addresses and job departments of employees, it delayed doing so for 3 months. Further, it never supplied the Union with telephone numbers of employees. The Union's obligation to represent employees presupposes the ability to communicate with them, and in this day and age, the telephone is the most effective method of communication. The Board has specifically held that the

items in this request are presumptively relevant, including employee telephone numbers. *Valley Programs, Inc*., 300 NLRB 423 (1990). I find that by delaying supplying the Union with this information, and refusing altogether its request for other information, Respondent violated Section 8(a)(1) and (5) of the Act.

Finally, Respondent admits that it did not answer the Union's letter of August 31, asking for information about the profit-sharing plan. Respondent argues that all plan information relevant to the Union's performance of its statutory duties was contained in the plan itself, a copy of which was furnished to the Union in October 1993. I reject Respondent's argument. The Union's August 31 request was specifically directed to modifications in the plan since September 1993 and the names of individuals currently employed by Respondent who have made withdraws from the plan, including dates of withdrawals and amounts withdrawn. Such information is vitally important to the Union to be able to assess the financial strength of the plan's capital fund, and from that information to bargain with Respondent concerning aspects of the plan which may affect viability for bargaining unit employees. Accordingly, I find that by failing and refusing to provide the Union with this information, Respondent violated Section 8(a)(1) and (5) of the Act.

I. *The Withdrawal of Recognition*

Between October 1993 and September 1994, Respondent and the Union met in negotiations on numerous occasions, but were unable to finalize a collective-bargaining agreement. On September 21, 1994, Respondent was presented with a petition signed by about two-thirds of its employees in the bargaining unit stating that they no longer wished to be represented by the Union. On September 21, 1994, after the anniversary of the Union's certification, Respondent withdrew recognition based on the employee petition. Simultaneously, Respondent withdrew its contract proposals and refused to bargain further with the Union.

One month after withdrawing recognition, Respondent granted employees various wage increases. Obviously since Respondent had withdrawn recognition from the Union, these increases were granted by Respondent unilaterally. The wage increases Respondent granted employees included wage rate increase and incentive rate increases to employees which had been tentatively agreed on in negotiations. In addition, Respondent granted employees an increase of $1 an hour in the base rate of incentive workers, i.e., sewing machine operators who made up the bulk of the bargaining unit.

It is undisputed that the $1 increase in the base rate of incentive workers was greater than the amount Respondent had offered during negotiations. Respondent states simply that it granted this increase in the base rate ''in an attempt to become competitive in its effort to hire additional sewing machine operators.'' It is undisputed that during negotiations Respondent did not propose and would not accept the Union's proposal of any increase in the base rate. There is no allegation here, however, that Respondent bargained in bad faith. Further, there is no dispute that the employee petition expressing dissatisfaction with the Union was signed by a majority of bargaining unit employees and was genuine. There is no evidence to suggest that Respondent played any part in fostering or circulating this petition.

Counsel for General Counsel argues that Respondent is prohibited from withdrawing recognition from the Union because it is tainted by the unremedied unfair labor practices which preceded the withdrawal. In fact, many of the unfair labor practices alleged in the complaint herein have been found to be without merit. The only significant unfair labor practices found herein have been Respondent's failure or refusal to provide the Union with several items of requested information. The Board, however, has long held that an employer is not free to withdraw recognition from a union while there are pending unfair labor practices which are unremedied. *Pittsburgh & New England Trucking Co*., 249 NLRB 833, 836 (1980). At the same time, the Board has not held that unremedied unfair labor practices per se disable an employer from withdrawing recognition. Rather, unfair labor practices must be of a character as to either affect the union's status, cause employee disaffection, or improperly affect the bargaining relationship itself. *Master Slack Corp*., 271 NLRB 78 (1984); *Guerdon Industries*, 218 NLRB 658 (1975). I find none of those elements present here. There is no reason to believe that the type of unfair labor practices found here, primarily the failure to provide the union with certain information, could or would tend to cause disaffection with the Union. Further, there is no reason to believe that these unfair labor practices were in any way at the root of the parties inability to reach agreement at the bargaining table, and thus cannot be said to have significantly affected the bargaining relationship itself. Accordingly, I find that the unfair labor practices found herein did not prevent Respondent from relying on the disaffection petition signed by a clear majority of its employees. I shall therefore dismiss the allegation that Respondent unlawfully withdrew recognition from the Union. It follows as well that Respondent did not violate the Act when it granted employees certain raises a month after withdrawing recognition from the Union, and I shall dismiss those allegations from the complaint as well.

J. *October 1994: Restroom Harassment*

The issue of female employees using the women's restroom as a haven for unauthorized smoke breaks throughout the workday has been discussed at length above. Testimony of Kathleen Veasey, however, requires doing so again at this juncture.

The complaint alleges that on August 31, 1994, Respondent unilaterally implemented and enforced a smoking policy against Veasey in violation of Section 8(a)(1) and (3) of the Act. On direct examination, in response to questions from counsel for General Counsel, Veasey first testified about a single incident which she placed as being in ''late August'' when she stated she was questioned by Plant Manager Williams about excessive time spent in the bathroom. Veasey then testified, ''later on that day'' Williams came back to her with a piece of paper showing that while Respondent was paying her a substantial sum, all she made the day before was 62 cents, and that she needed to work on her production output. In later testimony, Veasey identified the piece of paper referred to above as being a document dated October 26, 1994. As I have found above, the issue of unauthorized smoke breaks in the women's restroom had little, if anything to do with union activity among employees. The facts surrounding this particular incident only tend to strengthen that conclusion. It was Veasey herself who candidly admitted Re-

spondent had a long standing policy that smoking should occur only in the breakroom area. Despite Respondent's consistent effort to curtail smoking in the restroom, the largely female work force continued to use the women's restroom as a haven from Sipes and Plant Manager Williams to take brief unauthorized smoke breaks. Sipes candidly admitted his frustration in trying to curtail this practice, both before and after the inception of union activity.

This specific incident testified to by Veasey shows that both the practice and Respondent's attempt to curtail it also continued even after Respondent withdrew recognition from the Union. If anything, the timing of this incident testified to by Veasey only serves to lend credence to Respondent's point that the issue of unauthorized smoke breaks in the women's restroom had nothing to do with employee union activity. Contrary to Veasey's original testimony that this incident occurred in August 1994, her later testimony shows that the incident occurred in October 1994, a month after Respondent withdrew recognition from the Union. I again conclude, as I have earlier, that the issue of unauthorized smoke breaks in the women's restroom throughout the workday had nothing whatever to do with employee union activity, but rather was simply a matter of reasonable safety and employee productivity concerns on Respondent's part.

K. *Discharge of Morris Ruffin*

Morris Ruffin was hired by Respondent in October 1993, weeks after the Union was certified. Ruffin begin work as a spreader in the cutting room, and was later transferred to the warehouse as a shipping and stock clerk.

Ruffin admits that for more than a year after he was hired, he did nothing to support the union. In fact, the record reflects that Ruffin was one of the employees who signed the petition stating that he no longer wished to be represented by the Union.

In October 1994, Respondent implemented the wage increases discussed above. Ruffin testified that after being granted this wage increase, Plant Manager Williams asked him individually if he was satisfied with the increase. I credit Ruffin to this extent. Ruffin testified that in response to Williams' questions, Ruffin stated that his raise was inadequate. According to Ruffin, the next day when he reported to work, Williams had pulled his timecard and informed other employees that Ruffin had quit.

Williams testified Ruffin stated that Respondent was not paying him enough and that he was leaving for another job. Ruffin left early from work that day. Williams admits he pulled Ruffin's timecard and advised Sipes that Ruffin had quit. While I credit Ruffin over Williams that it was Williams who initiate the conversation about whether Ruffin was satisfied with the raise he had received, I found Williams extremely credible concerning Ruffin's reply that pay was inadequate and that Ruffin was leaving for another job. I credit this aspect of Williams' testimony.

Everyone agrees that the following Monday, Ruffin reported to the plant as if he was expecting to work. When Ruffin did not find his timecard, he sought out Williams. Williams told Ruffin that he was considered to have quit when he left in the middle of the workday on Friday saying that he was taking another job. Williams testified credibly Ruffin stated the other job had not panned out. Ruffin then sought out Sipes, who instructed Williams to allow Ruffin to return to work. Ruffin testified Sipes told him, ''just stop running off at the mouth.'' Counsel for General Counsel argues that this showed animus by Sipes toward Ruffin for not being satisfied with the amount of the wage increase. I reject this argument, however, for it is just as likely that Sipes was referring to Ruffin stating that he was going to take another job.

Ruffin himself admits that he did not become involved in any union activity until mid-November 1994, when he began wearing a union pin which stated, ''we want justice.'' Ruffin testified that he wore this pin only a short time and stopped wearing it when one of Respondent's salesmen suggested that Ruffin's job would be in jeopardy if he continued to wear the pin. I place no significance on this testimony since the complaint does not alleged and there is no evidence whatever to suggest that salesmen constitute supervisors or agents of Respondent within the meaning of the Act.

Ruffin testified that while he was wearing the union pin, Williams approached and asked Ruffin why he was in the Union. Williams credibly denied this conversation ever having occurred. Williams, who impressed me as a careful, deliberate, and largely credible witness testified that he never even saw Ruffin wear the union button. Under different circumstances, I might credit Ruffin over Williams, but in this case, Ruffin himself admits wearing the union button only a very short time. I credit Williams. Ruffin's immediate supervisor, Karen Sanders, admitted seeing Ruffin wear a blue button similar to that worn by other union supporters but testified credibly she never spoke to Ruffin about the Union or about Ruffin's pin. Sanders testified she did notice that Ruffin wore this pin for only a short time, and therefore she placed no significance on it one way or another.

Ruffin testified that on the day before he was discharged, he attended one of the weekly union meetings held in Respondent's breakroom. According to Ruffin, he observed Plant Manager Williams not far from the breakroom while the meeting was ongoing. Counsel for General Counsel argues that ''this appears to be the factor which caused Respondent to manufacture a basis for eliminating yet another perceived union supporter from the picture.'' I reject this argument for the following reasons.

The Union chose to hold weekly meetings in Respondent's breakroom on Thursday afternoons during regular breaktime. If it had wanted to, the Union could have held its meetings somewhere else offering more privacy. It chose, however, to hold its meetings in Respondent's open break area not even after work, but during the afternoon break. During this time, all employees, both union supporters and nonunion supporters were using the breakroom. The mere presence of an employee in the breakroom area during that time in no way indicated a support for the Union. Moreover, I place no significance in the fact that Plant Manager Williams might have been within sight of that breakroom area while the break was ongoing. Although both witnesses and I refer to it as a ''breakroom'' in reality it is simply an open area, a mere part of the large single room which comprises Respondent's sewing room. This break area is designated by a simple painted line on the floor separating it in one corner from the rest of the sewing room. The break area has tables and chairs where any employee may sit while taking a break or eating lunch. The break area is openly visible to many areas of the sewing room, and it is altogether illogical to draw any par-

ticular conclusion from the fact that Plant Manager Williams may have been within sight of the break area while a break was ongoing. I find that what precipitated Ruffin's discharge is what happened between Ruffin and Williams the following morning, as more fully described below.

Ruffin testified that he reported to work the following morning on time, yet found that his timecard had been pulled form the rack. According to Ruffin, timecards of some employees had already been checked in, while timecards of other employees were still in the rack. Kathleen Veasey, the primary union employee activist, corroborates Ruffin that he reported to work on time.

Plant Manager Williams testified that on this morning Ruffin was late for work, and this was the reason why he had pulled Ruffin's timecard. Veasey admitted on cross-examination that Williams regularly pulled timecards of employees who were not there on time, and that he had always done this even long before any union activity. I credit Williams that Ruffin was late on this particular morning and that this is why he had pulled Ruffin's timecard.

When Ruffin found his timecard pulled, Ruffin sought out Williams. According to Ruffin, he merely complained to Williams that Williams was picking on him. Williams and other witnesses offer a much different version. Williams testified credibly that when Ruffin approached him, Ruffin cursed Williams. When Williams told Ruffin not to talk to him that way, Ruffin replied that he could talk to Williams any way he wanted to. Williams is corroborated by employee Elizabeth Ware as well as Willie Mae Ritter, both of whom I found very credible in describing this incident. Ritter testified credibly that in the exchange between Ruffin and Williams, Ruffin cursed Williams and called Williams both ''dumb'' and a ''mother f____ker.'' Ritter also testified credibly to overhearing Ruffin tell Williams, ''don't you f__ck with me.'' Ware testified credibly that she overheard Ruffin speaking loudly to Williams. They then passed her machine, and Ware overheard Williams say to Ruffin, ''you can't talk to me like that,'' to which Ruffin replied, ''I can talk to you any way I want. . . . I'm tired of this sh__t.'' At that point, Williams told Ruffin he was suspended indefinitely until Williams could discuss the matter with Sipes.

After Williams consulted with Sipes and told Sipes the manner in which Ruffin had spoken to him, Sipes authorized Ruffin's discharge. Williams then discharged Ruffin for insubordination.

Considering the entire record, I find counsel for General Counsel's prima facie case regarding Ruffin to be extremely weak. Ruffin's union activity was minimal. Counsel for General Counsel attempts to weave a fairly complex theory suggesting that Williams set out to manufacture reasons to get rid of Ruffin just as soon as Ruffin expressed dissatisfaction with the raise granted by Respondent. I find counsel for General Counsel's theory just too far fetched. Its primary flaw, however, is that it would have me ignore very credible evidence that on more than one occasion, and indeed immediately prior to his discharge, Ruffin was so insubordinate to Williams as to curse him, call him ''dumb'' and address him directly as a ''mother f__cker.'' I find that it was Ruffin's outrageous insubordinate conduct, and not any union activity, which precipitated Ruffin's discharge, and I shall dismiss that allegation from the complaint.

CONCLUSIONS OF LAW

1. Respondent Howe K. Sipes Company is, and has been at all times material, an employer engaged in commerce within the meaning of Section 2(6) and (7) of the Act.

2. Furniture Workers' Division, International Union of Electronic, Electrical, Salaried, Machine and Furniture Workers, AFL–CIO, Local 282 is, and has been at all times material, a labor organization within the meaning of Section 2(5) of the Act.

3. The evidence does not establish that Respondent issued the January 1994 warning to Shirley Jones due to her union activity, and that complaint allegation is dismissed.

4. The evidence does not establish that Respondent condoned violence against employees because of their union activities, and that complaint allegation is hereby dismissed.

5. Respondent issued a warning to Shirley Jones and later suspended Jones because of her insubordination, not her union activity, and those complaint allegations are dismissed.

6. The evidence does not establish that Respondent reassigned Shirley Jones because of her union activity, and that complaint allegation is dismissed.

7. The evidence does not establish that Respondent referred to employees as ''trash'' because they supported the Union, and in any event such a comment would not violate the Act, and that complaint allegation is dismissed.

8. The evidence does not establish that Respondent issued a warning to Paulette Payne for low production because of her union activity, and that complaint allegation is dismissed.

9. Respondent suspended and later discharged Dorothy Moffitt because of her insubordination, not her union activity, and those complaint allegations are dismissed.

10. The evidence fails to establish that Respondent altered its plant visitation policy because of employee union activity, and that complaint allegation is dismissed.

11. The evidence fails to establish that Respondent subcontracted bargaining unit work either unilaterally or because of employee union activity, and those complaint allegations are dismissed.

12. Respondent did not unlawfully fail or refuse to provide the union with a detailed comparison of labor costs for it and outside contractors, and that complaint allegation is dismissed.

13. Respondent failed and refused to provide the Union with employee attendance records, disciplinary warnings, and termination notices, and Respondent thereby violated Section 8(a)(1) and(5) of the Act.

14. Respondent failed and refused to provide the Union with information concerning orders received, orders backlogged, and orders delayed due to an alleged slowdown of work by employees, and Respondent thereby violated Section 8(a)(1) and (5) of the Act.

15. Respondent did not fail or refuse to adequately respond to the Union's request for information regarding Johnnie West and Carol Durden, and those complaint allegations are dismissed.

16. Respondent did not unlawfully fail or refuse to provide the Union with information regarding the movement or disposition of machinery absent a showing that Respondent's actions could in any way affect conditions of employment for bargaining unit employees, and those complaint allegations are dismissed.

17. Respondent failed and refused to provide the Union with telephone numbers of employees, addresses of employees, and employee job classifications in a timely manner, and Respondent thereby violated Section 8(a)(1) and (5) of the Act.

18. Respondent failed and refused to provide the Union with information about its profit-sharing plan, and Respondent thereby violated Section 8(a)(1) and (5) of the Act.

19. Respondent's withdrawal of recognition from the Union was not unlawful, and that complaint allegation is dismissed.

20. Respondent did not violate the Act when it granted employees raises after withdrawing recognition from the Union, and that complaint allegation is dismissed.

21. The evidence fails to establish that Respondent monitored the bathroom breaks of employees because of their union activity, and that complaint allegation is dismissed.

22. Respondent discharged Morris Ruffin because of his insubordination, and not because of union activity, and that complaint allegation is dismissed.

23. The unfair labor practices which Respondent has been found to have engaged in, as described above, have a close, intimate, and substantial relation to trade, traffic, and commerce among the several States and tend to lead to labor disputes burdening and obstructing commerce and the free flow of commerce within the meaning of Section 2(6) and (7) of the Act.

REMEDY

Having found that the Respondent has engaged in certain unfair labor practices in violation of Section 8(a)(1) and (5) of the Act, I shall recommend that it be ordered to cease and desist and to take certain affirmative action designed to effectuate the policies of the Act. The normal remedy in a case of this type would include a cease-and-desist order to prevent Respondent from engaging further in the type of acts found unlawful herein, as well as an affirmative provision requiring Respondent to provide the Union with the information which Respondent unlawfully failed to provide to the Union. In this instance, however, Respondent has lawfully withdrawn recognition from the Union, and I can find no reason to require Respondent to produce the relevant information at this time. Therefore, I include the cease-and-desist order but no affirmative provision requiring Respondent to provide the information at this juncture.

Accordingly, I issue the following recommended[1]

ORDER

The Respondent, Howe K. Sipes Company, Memphis, Tennessee, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Failing and refusing to provide Furniture Workers' Division, International Union of Electronic, Electrical, Salaried, Machine and Furniture Workers, AFL–CIO, Local 282, or any other union which is the certified bargaining representative of its employees, information that is relevant and necessary for it to bargain intelligently on behalf of employees, including employee telephone numbers, addresses, job classifications, attendance records, disciplinary warnings, termination notices, information related to any alleged slowdown of work by employees, and information about its profit-sharing plan.

(b) In any like or related manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act.

2. Take the following affirmative action necessary to effectuate the policies of the Act.

Post at its Memphis, Tennessee facility copies of the attached notice marked ''Appendix.''[2] Copies of the notice, on forms provided by the Regional Director for Region 26, after being signed by the Respondent's authorized representative, shall be posted by the Respondent immediately upon receipt and maintained for 60 consecutive days in conspicuous places including all places where notices to employees are customarily posted. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material.

[1] If no exceptions are filed as provided by Sec. 102.46 of the Board's Rules and Regulations, the findings, conclusions, and recommended Order shall, as provided in Sec. 102.48 of the Rules, be adopted by the Board and all objections to them shall be deemed waived for all purposes.

[2] If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading ''Posted by Order of the National Labor Relations Board'' shall read ''Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board.''

APPENDIX

NOTICE TO EMPLOYEES
POSTED BY ORDER OF THE
NATIONAL LABOR RELATIONS BOARD
An Agency of the United States Government

The National Labor Relations Board has found that we violated the National Labor Relations Act and has ordered us to post and abide by this notice.

Section 7 of the Act gives employees these rights.

> To organize
> To form, join, or assist any union
> To bargain collectively through representatives of their own choice
> To act together for other mutual aid and protection
> To choose not to engage in any of these protected concerted activities.

WE WILL NOT fail and refuse to provide Furniture Workers' Division, International Union of Electronic, Electrical, Salaried, Machine and Furniture Workers, AFL–CIO, Local 282, or any other union which is the certified bargaining representative of its employees, information that is relevant and necessary for it to bargain intelligently on behalf of employees, including employee telephone numbers, addresses, job classifications, attendance records, disciplinary warnings, termination notices, information related to any alleged slowdown of work by employees, and information about our profit-sharing plan.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce employees in the exercise of the rights guaranteed them by Section 7 of the Act.

HOWE K. SIPES COMPANY